IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION 132/2001.

Messers Jay Jay Packart ..Petitioner.

V/s.

Chemage Limited ..Respondent.

Mr S. G. Bhandary i/b Bhandary & Bhandary
for the Petitioner.
None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 28th FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None for the respondent.

2. Perused petition.

3. Petitioner has invoked jurisdiction of this Court under Sections 433 and 434 of the Companies Act, 1956 to seek winding up of "Chemage Limited" (hereinafter referred to as "Company").

4. The factual matrix on which petition is based, reveals that petitioner has sold, supplied and delivered goods to the company, the details of which are incorporated in Exh.A annexed to the petition from which it is clear that the petitioner has to recover from company

a sum of Rs. 2,49,564.61 with interest thereon. The Company did not pay the same to the petitioner. The debt remained unsatisfied. Since there was no discharge of liability of petitioner by the company, the petitioner was required to issue statutory notice dated 26.9.2000 under Section 434 of the Companies Act, 1956 demanding outstanding dues in respect of which hardly there was any dispute between the parties.

5. The said notice was sent on the registered address of the Company by the petitioner. The same was received by the Company. However, there was neither reply to the said notice nor payments were remitted by the Company to the petitioner.

6. Petitioner, having left with no other alternative, has invoked jurisdiction of this Court to seek winding up of the respondent company. After admission of this petition, notice was issued to the company. Notice was issued to the Company. Notice was served on the Company. After service of the petition, M/s. Mehta and Co., Advocates and Solicitors representing company had sought inspection of the documents. Said firm of Solicitors and

Advocates appeared and filed their Vakalatnama on behalf of the Company and sought time, to file their reply but thereafter, they failed to file their Vakalatnama. Thus, the said Solicitor and Advocate did not file their appearance on behalf of the company.

7. In the above view of the matter, considering absence of contest, the company was bound to discharge it's liability set up in the winding up petition. In other words, assertion made in the petition, which are supported by the documents placed on record, have remained uncontroverted. In that sense the legal presumption, that arises against the respondent company, that it is unable to pay it's debts has remained unrebutted. The petitioner has made out a case to make order under Section 434 (1) (a) of the Companies Act, 1956. Under these circumstances, the respondent company is liable to be wound up.

8. In the result, the petition is made absolute in terms of prayer clause (a)and (b) with no order as to costs.

[V.C.DAGA,J]